

### **REMARKS**

The present amendments and remarks are responsive to an Final Office Action mailed March 29, 2006, where the Examiner has rejected claims 1-24. Herein, Applicant has amended independent claims 1, 8, 13, and 20 and corresponding dependent claims 4-5, 9-12, 16-19 and 23-24. Accordingly claims 1-24 remain pending in this application.

#### **A. Response to U.S.C. §102 Rejections**

In paragraphs 1 of the Final Office Action, the Examiner rejects independent claim 13 under 35 USC 102(e) as being anticipated by US Publication No. 2004/0261073 ("Herle"). Applicant respectfully submits that Herle fails to disclose all the limitations of the amended independent claim 13.

##### **Claim 13**

Claim 13 has been amended to more clearly express that the claimed system provides a system server for sending the over-the-air programming call comprising the over-the-air programming session and an end of session indicator. Each mobile subscriber unit comprises an end of session detector to detect the end of session indicator, and if the end of session indicator is not received from the system server, the a call terminator of the mobile subscriber unit terminates the call.

As stated by the Examiner on page 3 of the action, the processor of Herle can act as a call terminator and end of session detector to terminate the call when the end of the over-the-air programming session is detected (citing paragraphs 45, 46, 60 and 61). Applicant respectfully disagrees that terminating a call corresponds to "the software procedure ends" (paragraph 46) or "the download operation ends" (paragraph 61) as disclosed by Herle. However, to more clearly express the claimed system, Applicant amends the claim to comprises the call terminator with ends the programming call when the end session detector *fails to detect* an end session indicator received from the system server.

Herle fails to disclose any embodiment as claimed. As noted above, Herle merely suggested ending the download operation or the software procedure. Since

Herle fails to disclose all the limitations of amended claim 13, Applicant submits that claim 13, and dependent claims 14-19, are not anticipated by Herle.

### **B. Response to U.S.C. §103 Rejections of Independent Claims 1, 8 and 20**

On pages 7 and 12 of the Office Action, the Examiner rejected independent claims 1, 8 and 20 and various claims dependent thereupon under 35 USC 103(a) as being unpatentable over Herle in view of US Patent No. 6,912,256 ("Noblet"). Applicant respectfully submits that Herle and Noblet, whether alone or in combination, fail to teach all the limitations of the amended independent claims. As discussed in Section A of this Response, Herle fails to teach several limitations in independent claim 1 which also have been added to independent claims 1, 8 and 20, and Noblet does not overcome this deficiency.

#### **Claim 1**

Claim 1 has been amended to more clearly express that the claimed method provides, among other limitations, a mobile subscriber unit which detects an expected termination of the OTA programming call by the network, and if the expected termination is not detected, the mobile subscriber unit terminates the call. The Examiner presents Noblet as a reference that discloses a mobile unit that releases the communication channel if no changes to the mobile are required. However, Noblet does not cure the deficiencies of Herle. That is, Noblet fails to teach a mobile subscriber unit that specifically terminates the call upon a failure of the detection of the termination of the call.

#### **Claim 8**

Similarly, claim 8 has been amended to more clearly express that the claimed subscriber unit comprises, among other limitations, a call terminator that terminates the over-the-air call when the end of session detector fails to detect the expected end of session indicator. Noblet and Herle alone or in combination do not teach this limitation.

#### **Claim 20**

Claim 20 is also amended to express that the claimed method comprises a mobile subscriber unit that determines whether an end-of-session indicator has been received from the network, and if not received, the unit terminates the over-the-air

programming call. Noblet and Herle alone or in combination do not teach this limitation. The Examiner further cites Dahlin (US Patent No. 5,257,401) as a reference that teaches detection of transitioning from an analog network to a digital network. However, this reference also does not cure the deficiencies of the Noblet and Herle references as discussed above.

Since neither Herle, Noblet nor Dahlin teach all the limitations of independent claims 1, 8, and 20, Applicant submits that the Examiner can not maintain a prima facie case of obviousness. Accordingly, these independent claims, and the claims dependent thereupon, are not rendered obvious by a combination of these cited references.

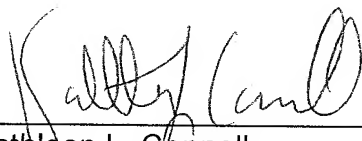
### **Conclusion**

For all the foregoing reasons, allowance of claims 1-24 pending in the present application is respectfully requested.

The fee for an RCE is submitted herewith by EFS. If necessary, Applicant requests under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above-identified application and to charge the fees for a large entity under 37 CFR 1.17(a). The Director is authorized to charge any additional fee(s) or any underpayment of fee(s) or credit any overpayment(s) to Deposit Account No. 50-3001 of Kyocera Wireless Corp.

Respectfully Submitted,

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